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IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1934**

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## No. 594

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THE FEDERAL LAND BANK OF ST. LOUIS,
A CORPORATION,

*Petitioner,*

*vs.*

A. B. PRIDDY, CIRCUIT JUDGE,

*Respondent.*

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## BRIEF OF PETITIONER.

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### I. Opinion Below.

The opinion of the Supreme Court of Arkansas (R. 14) and the order denying an application for a rehearing (R. 18) have not as yet been reported in the official reports of that court, but both of said decisions are reported in 74 S. W. (2d) 222.

### II. Jurisdiction of This Court.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code (28 U. S. C. 344 (b)). The rights,

privileges, and immunities especially set up in claim by the petitioner are based upon and governed by the Constitution of the United States and by an Act of Congress approved July 17, 1916, and Acts amendatory thereof, known and cited as the Federal Farm Loan Act (12 U. S. C., Ch. 7) [1].

The Supreme Court of Arkansas has power to issue a writ of prohibition under Art. VII, Sec. 4 of the State Constitution, which reads, in part, as follows:

> "The Supreme Court, except in cases otherwise provided by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions as may from time to time be prescribed by law (a). It shall have a general superintending control over all inferior courts of law and equity; and, in aid of its appellate and supervisory jurisdiction, it shall have power to issue writs of error and supersedeas (b), certiorari, habeas corpus, prohibition, mandamus and quo warranto (c), and, other remedial writs (d), and to hear and determine the same. • • • "

The decision of the Supreme Court of Arkansas denying a writ of prohibition is a final judgment reviewable by this Court. (*Missouri ex rel. St. Louis, etc., Ry.* v. *Taylor*, 266 U. S. 200; *Bandini Petroleum Co.* v. *Superior Court of State of California*, 284 U. S. 8.)

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[1] For the convenience of the court, petitioner has filed with the clerk copies of a compilation of the Federal Farm Loan Act and of the laws relative to Federal agencies for farm credit, published by the Farm Credit Administration. This compilation is in the form of two pamphlets, one relating to long-term credit and the other to short and intermediate-term credit. The statutes are set forth in these pamphlets in accordance with the codification thereof, in Title 12 of the United States Code.

The petition for writ of certiorari was filed in this Court on December 22, 1934, within three months after entry of final judgment below. Although the Supreme Court of Arkansas rendered its decision on June 18, 1934 (R. 14) denying the petition for writ of prohibition, such decision did not become final until September 24, 1934 (R. 18), when that court denied the petitioner's application for a rehearing (*Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164).

## III. Statement of the Case.

Petitioner is one of the twelve Federal land banks chartered by the Federal Farm Loan Board under the provisions of the Federal Farm Loan Act (12 U. S. C. 641 *et seq.*; 39 Stat. 360, *et seq.*) Petitioner is authorized by its charter to do business in the States of Arkansas, Illinois and Missouri. Petitioner maintains its office in the City of St. Louis, in the State of Missouri.

The respondent, A. B. Priddy, is a judge of the Circuit Court in and for Pope County, Arkansas. A resident of Pope County, one Briscoe, brought suit in that court against this petitioner, for recovery of a sum alleged to be owing under a contract (R. 4). A writ of attachment was issued by the Circuit Court, as prayed in the petition, and a summons, directed to the defendant, was served upon its tenant on the property (R. 8).

In issuing the attachment above mentioned, the Circuit Court apparently proceeded under the provisions of Section 494, Crawford and Moses Digest of the Statutes of Arkansas, although no reference is made to this section in the decision of the Supreme Court. This section provides that:

> "The plaintiff in a civil action may, at or after the commencement thereof, have an attachment against the

> property of the defendant . . . . In an action for the recovery of money . . . where the action is against a defendant . . . who is a foreign corporation or nonresident of the State . . . ."

Following the attachment, constructive service of process was attempted to be made upon this petitioner under the following provisions of Sections 1159 and 1160 of Crawford and Moses Digest of the Statutes of Arkansas:

> "Section 1159. Warning order. Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action . . . that the defendant is:
>
> First. A foreign corporation, having no agent in this State; or,
>
> Second. A nonresident of this State . . . the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order . . . ."

> "Section 1160. Publication. The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. . . . ."

The statutes of Arkansas further provide (C. & M. Dig. Sec. 1162) that—

> "A defendant against whom a warning order has been made and published shall, upon completion of the publication of the warning order for the four weeks required by law, be deemed to have been constructively summoned upon the date of the making of the order."

A warning order was issued by the Circuit Court in reliance upon the above quoted provisions, and jurisdiction was assumed over the case (R. 8-11).

Petitioner entered its special and limited appearance in said action and moved the court to quash the service, dissolve the attachment and dismiss the suit upon the grounds stated in said motion (R. 6). This motion was submitted to and overruled by the trial court on April 2, 1934 (R. 8). Petitioner thereupon filed an original petition in the Supreme Court of the State of Arkansas for a writ of prohibition to be directed to the Honorable A. B. Priddy as Judge of the Circuit Court in and for Pope County, Arkansas, respondent herein, to prohibit him as such Circuit Judge from assuming jurisdiction of said action, and to prohibit him as such judge from making or entering any order, judgment or decree in or about said action (R. 1). This petition for writ of prohibition was heard and considered by the Supreme Court of the State of Arkansas, and an opinion and decision were rendered by that court on June 18, 1934, denying said petition (R. 14).

In due time petitioner filed a motion in the Supreme Court of the State of Arkansas, praying for rehearing of its said petition for a writ of prohibition (R. 16). Said motion for rehearing was denied by said court on September 24, 1934 (R. 18). The order of the Supreme Court of Arkansas, denying this bank's petition for rehearing of said petition, constitutes a final judgment of the highest court of said State. *Chicago Great Western R. Co.* v. *Basham*, 249 U. S. 164.

## IV. Proceedings in This Court.

On December 22, 1934, petitioner applied to this Court for a writ of certiorari to review the decision of the court below. The writ was granted by an order of this Court entered on February 4, 1935 (R. 18). The prayer for review was based upon the following statement of the specification of errors relied upon by the petitioner.

## V. Assignments of Error.

1. The court erred in failing to hold that petitioner, being a Federal banking corporation and an instrumentality of the Federal Government, is immune from interference in the performance of its functions by the attachment or garnishment of its property.

2. The court erred in holding that Section 4 of the Federal Farm Loan Act (12 U. S. C. 676) constitutes a waiver of immunity from attachment or garnishment before judgment, in providing that Federal land banks may "sue and be sued * * * as fully as natural persons."

3. The court erred in holding that a Federal land bank is a "foreign corporation" in any State of its district.

## VI. Summary of Argument.

1. A Federal banking corporation, an agency and instrumentality of the Federal Government, is immune from interference in the performance of its functions by the attachment or garnishment of its property.

*Buchanan* v. *Alexander*, 4 How. 20; *Earle* v. *Pennsylvania*, 178 U. S. 449; *Earle* v. *Conway*, 178 U. S. 456; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738; *Domenech, Treasurer of Puerto Rico* v. *National City Bank of New York* (No. 386).

2. Under the provisions of the Federal Farm Loan Act (12 U. S. C. § 641 *et seq.*), a Federal land bank operates as an agency and instrumentality of the Federal Government and is, therefore, entitled to immunity from attachment and garnishment.

*Smith* v. *Kansas City Title and Trust Company*, 255 U. S. 180; *Federal Land Bank* v. *Gaines*, 290 U. S. 326; *Krauthoff* v. *Kansas City Joint Stock Land Bank*, 23 F. (2d) 71

(certiorari denied), 280 U. S. 583; *Barnes* v. *District of Columbia*, 91 U. S. 540, 544; *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554; *Dollar Savings Bank* v. *United States*, 19 Wall. 227 (l. c. 239).

3. The capacity to "sue and be sued" contained in Section [illegible] of the Act (12 U. S. C., § 676) does not constitute a waiver of immunity from attachment and garnishment.

*Brown* v. *Duchesne*, 19 How. 183; *District of Columbia* v. *Woodbury*, 136 U. S. 450; *Chicago & N. W. Ry.* v. *Durham Co.*, 271 U. S. 251; *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351, 356; *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation* (App. D. C.), 53 F. (2d) 223; *Earle* v. *Pennsylvania* and *Earle* v. *Conway*, *supra*.

4. A Federal land bank is a "national corporation" and as such is not a *foreign corporation* within any State of the Union for the purpose of a State statute providing for constructive service upon foreign corporations.

*Bankers' Trust Co.* v. *Texas and Pac. Ry.*, 241 U. S. 295; *First National Bank* v. *California*, 262 U. S. 366; *Commonwealth* v. *Texas and Pac. Ry. Co.*, 98 Pa. St. 90; *Leggett* v. *Federal Land Bank of Columbia*, 204 N. C. 151; 167 S. E. 557.

## VII. ARGUMENT.

**1. The property and funds of the Federal Government and of its agencies and instrumentalities are immune from attachment and garnishment.**

Since the case of *Buchanan* v. *Alexander*, 4 How. 20, was decided by this Court in 1846, it has been established without question that creditors may not divert public money or seize public property "by process of attachment." It has been equally well established since that time that cred-

itors may not divert public funds which "may be placed in the hands of an agent for disbursement".

In that case, this Court held that the creditors of certain seamen could not levy writs of attachment upon money due the seamen for wages, in the hands of the purser of a vessel of the United States Navy. In its opinion, the court stated:

> "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the army and of the navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it, At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service.
>
> "*The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended.* So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen.
>
> "We think the question in this case is clear of doubt, and requires no further illustration." (Italics added.)

A "further illustration", which the court may have had in mind, is the age-old doctrine that the sovereign may not

be sued without its consent. Since the sovereign may not be sued, it follows logically that the sovereign's property may not be seized by a court. And although it may consent to be sued, it does not consent to the seizure of its property, unless further and specific consent be given by statute (*Earle* v. *Pennsylvania*, 178 U. S. 449, *Earle* v. *Conway*, 178 U. S. 456).

The decision in the *Buchanan* case established a rule which has never been modified, namely, that the functions of the Federal Government may not be "defeated by State process or otherwise". This rule was unquestionably based upon the principles previously announced in the famous case of *McCulloch* v. *Maryland*, 4 Wheat. 316, wherein this Court said: that the Constitution of the United States prohibits interference with the execution of powers granted to the Federal Government, whether such powers be exercised by a department of the Government, or by its duly appointed agents or instrumentalities. That principle has been reaffirmed in *Osborn* v. *United States Bank*, 9 Wheat. 738, and in a long line of cases. The most recent application of the rule is to be found in the decision handed down by this Court on February 4, 1935, in *Domenech, Treasurer of Puerto Rico* v. *National City Bank of New York*, (No. 386). In holding that the Government of Puerto Rico has no authority to tax personal property or branches of national banks, the court said:

> "• • • like a state though for a different reason, such an agency [territory] may not tax a *federal instrumentality*. A state, though a sovereign, is precluded from so doing because *the Constitution requires that there be no interference by a state with the powers granted to the federal government.* • • • a territory of a possession may not do so because *the dependency may not tax its sovereign.* True the Congress may consent to such taxation; *but the grant to the Is-*

> *land of a general power to tax should not be construed as a consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice.''* (Italics added.)

The District Court in the case of *McGrew* v. *McGrew*, 38 F. (2d) 541, 544, also followed the rule announced in the *Buchanan* case as follows:

> "It is conceded that the defendant's salary as a government employee cannot be reached by attachment or other process issued in an action at law. To permit this 'at all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended.' Mr. Justice McLean in *Buchanan* v. *Alexander*, 4 How. 20, 11 L. Ed. 857. The reason for this rule applies with equal force to a court order compelling a public officer or employee under the penalities of the law to pay over his salary, or part thereof, as and when received by him, to be credited upon a judgment theretofore recovered at law against him. The result of such a proceeding, if sustained, would indirectly subject the public service to equal embarrassment with that resulting from the service of an attachment or garnishment at law, and the creditor would accomplish indirectly what he is forbidden to do directly."

We respectfully submit that, under and by virtue of the provisions of the Federal Farm Loan Act and the acts which should be read in conjunction therewith, the Federal land banks were created and function as agencies and instrumentalities of the Federal Government. They are in fact, incorporated bureaus of the Government itself. A re-

view of the provisions of the statutes in question will demonstrate the correctness of this statement.

*The Federal Farm Loan Act.*

On May 14, 1916, the bill, which later became the Federal Farm Loan Act, was passed by the Senate and referred to the House. The bill was taken up by the House and sent to the Committee on Banking and Currency for consideration. Later the committee reported the bill, with amendments. The report described in great detail the purposes and provisions of the proposed legislation. Under the caption "Government Control", the report stated: "The creation of this board [The Federal Farm Loan Board] assures to the Government the general supervision and control of the entire system." (H. R. Rpt. No. 630, 64th Cong. 1st Sess.) The bill was finally passed and was later approved on July 17, 1916.

Fifteen years ago this Court passed upon the constitutionality of the Act in the case of *Smith* v. *Kansas City Title and Trust Company*, 255 U. S. 180. The court concluded (l. c. 211) that the "creation of these banks, and the grant of authority to them to act for the Government as depositaries of public moneys and purchasers of Government bonds, brings them within the creative power of Congress . . . ." The court pointed out also that the Act is entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, *to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes.*" (Italics added.)

Section 1 of the Act (12 U. S. C. § 641) provided originally that "Its administration shall be under the direction

and control of the Federal Farm Loan Board hereinafter created." By Executive Order No. 6084, "all the powers and functions of the Federal Farm Loan Board are transferred to and vested in the farm loan commissioner [now known as land bank commissioner], subject to the jurisdiction and control of the Farm Credit Administration as herein provided." We shall, therefore, refer throughout this brief to the governmental body charged with the administrations of the Act as the "Farm Credit Administration", and all quotations from the Act will follow the arrangement thereof in the United States Code.

Section 3 of the Act (12 U. S. C. §§ 651, 654, 655) originally provided for the establishment, at the seat of Government, in the Department of the Treasury, of a bureau under the general supervision of the Federal Farm Loan Board, *charged with the execution of this Act and of all acts amendatory thereto.* The extent to which the Government retained control of the execution of the Act and the direction of the administration of the whole system, is forcibly demonstrated by a brief recital of the powers of the Farm Credit Administration.

The following references are to sections of Chapter 7, Title 12, U. S. C.:

The Administration is given the power to approve or disapprove the form and term of any first mortgage taken by the banks of the System, (§ 642); to appoint registrars, appraisers, and examiners who are declared by the Act to be public officials (§ 656); to adopt rules and regulations not inconsistent with law as it may deem necessary for the efficient execution of the provisions of the Act (§ 655); to divide the United States into twelve districts and establish Federal land banks in each district and to establish branches in the territorial and insular possessions (§§ 671, 672); to prescribe the form and terms of the charters

of such institutions, subject to certain statutory requirements (§ 674); and "to direct such changes in or additions to any such organization certificate, not inconsistent with this subchapter, as it may deem necessary or expedient". (§ 675.)

At this point it is significant to note that the stockholders of Federal land banks are not given the power to adopt changes or make amendments to its articles of incorporation.

The Farm Credit Administration is further given authority to approve or disapprove by-laws adopted by the directors of the banks (§ 676); to appoint four of the seven directors of these institutions, to approve the compensation received by such directors and the other officers and employees of each bank (§ 683); to organize and charter national farm loan associations, through which loans are made by Federal land banks (§ 711); to grant or refuse to grant a charter to such associations; to authorize the making of direct loans in territories where associations have not been formed, or where associations have become inactive on account of financial difficulties, or are in process of liquidation (§ 723); to approve fees and charges paid by applicants for loans and borrowers (§ 723); to disapprove the acceptance of any application for a loan received by a Federal land bank (§ 735); and, through appraisers appointed by it, fix the maximum amount of any loan which may be made by these institutions (§ 752); and to direct and prescribe the way in which appraisals shall be made (§§ 754, 755).

No Federal land bank may issue or sell farm loan bonds without first obtaining the approval of the Farm Credit Administration (§ 781); all first mortgages and Government bonds tendered as collateral for farm loan bonds are subject to the approval of the Administration (§ 842); the

collateral is held by a public officer appointed by the Administration (§§ 851-857); the Administration is authorized to prescribe the mode and terms of payment of such bonds (§ 862); the bonds must be attested by the Land Bank Commissioner (§ 874), and, upon the failure of any bank to pay its proportion of the interest and principal due upon bonds issued by it or on its behalf, the Administration is authorized to call upon the other banks for the amount necessary to make such payments (§ 882).

The Administration is authorized also to call upon any bank for additional security for the bonds previously issued by it (§ 881 (b)); payments of principal on mortgages and other collateral pledged as security for bonds are made to and held by registrars who are under the direction and control of the Administration (§ 897); such first mortgages, and the farm loan bonds they are pledged to secure, are declared by the Act to be instrumentalities of the Federal Government (§ 931); and the bonds are made a lawful investment of fiduciary and trust funds and may be accepted as security for all public deposits (§ 941).

Joint stock land banks created under the Act, now in the process of liquidation, were chartered only with the consent and approval of the Farm Credit Administration (§ 811); the reserves of Federal and joint stock land banks and national farm loan associations may be invested only with the approval of the Administration (§§ 901, 914); and dividends may be paid by the bank only with its approval (§ 902).

Periodic examinations of the land banks and associations are made by public officials appointed by and under the direction of the Administration (§ 951). In case of insolvency of any institution incorporated under the Act the Administration is given power to appoint receivers and through such receivers to sell its assets and pay its liabilities

(§§ 961-964), and no bank or association may go into voluntary liquidation without the Administration's approval (§ 965).

Certain specific powers of the Farm Credit Administration are set forth in section 831 as follows:

> (1) To organize and charter banks and loan associations:
>
> (2) To review and alter interest rates; (3) to grant or refuse authority to issue farm loan bonds; (4) to make rules and regulations as to charges on loans; (5) to require reports of condition from and to examine banks and associations; (6) to prescribe form and terms of bonds and surety bonds; (7) to suspend or remove registrars, appraisers and examiners; and
>
> "(*i*) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.
>
> "(*j*) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this sub-chapter."

**A Federal Land Bank is an Instrumentality of the Government.**

The foregoing provisions of the Act indicate that the Federal land banks were organized by Government officials pursuant to Congressional mandate: "The Farm Credit Administration *shall* establish in each Federal land bank district a Federal land bank" (italics added) (§ 672). These banks must operate under the close scrutiny and regulation of the Government. Government appointed directors have always had a voice in the routine management of the bank, and now have the controlling voice (§§ 678, 681).

The Act imposes rigid restrictions on the business of each of these institutions. They may not engage in a gen-

eral banking business but may lend money and extend credit only for specific uses and definite purposes (§§ 751, 791). Subject to these statutory limitations, the only business which a Federal land bank may lawfully transact is the making of long-term loans upon the security of mortgages which are declared to be instrumentalities of the Government of the United States; the issuing of bonds which are also declared to be similar instrumentalities, together with the business necessarily incident thereto; the banks may be designated by the Secretary of the Treasury as depositaries of public moneys; the rendering of services as financial agents of the Government and depositaries of public moneys; and the rendering of services which may be required of them by the Land Bank Commissioner in connection with the execution of the provisions of the Emergency Farm Mortgage Act of 1933 (§ 1018; 48 Stat. 49).

With the exception of real estate, the property, assets, and income of Federal land banks are specifically declared to be exempt from taxation (§ 931). As pointed out by this Court, in the cases of *Clallam County* v. *United States*, 263 U. S. 341, 344, and of *McCulloch* v. *Maryland*, 4 Wheat. 316, 426, this declaration was not necessary in order to exempt a Federal instrumentality from the payment of taxes. In fact, this was pointed out during the debates in the Senate (relative to the constitutionality of the exemption) in response to questions propounded on the floor when the legislation was being considered (53 C. R. 6967). On the other hand, if the Act had not provided "except taxes upon real estate" it would have been beyond the power of the states to tax such property.

In January, 1932, the Congress gave the banks further financial assistance by authorizing the Government to purchase additional stock. Under the provisions of the Act, which was approved on January 23 of that year, (47 Stat.

12) the Government subscribed to $125,000,000 of new capital, $25,000,000 of which was earmarked for use by the banks in connection with the extension of defaulted loans (12 U. S. C. § 781 (Tenth)).

By an amendment to the same section, approved on June 16, 1933, (§ 781, Tenth; 48 Stat. 273), the Secretary of the Treasury was authorized to subscribe "to the paid-in surplus" of the Federal land banks in the sum of $50,000,000, for the purpose of granting additional extensions of interest and principal payments due or to become due from their borrowers. An additional $15,000,000 was made available by the same Act in order to permit a reduction in the rate of interest paid by borrowers on existing loans.

By the Federal Farm Mortgage Corporation Act of January 31, 1934 (12 U. S. C. 1020, *et seq;* 48 Stat. 344, *et seq.*), Congress has made further provisions for assistance to the Federal land banks in carrying out, as instrumentalities of the Government, its program for relieving and refinancing the burden of farm debt, which had become a national menace. By the terms of this act, Congress established the Federal Farm Mortgage Corporation, with a capital of $200,000,000 owned by the Government; and authorized the Corporation to issue and have outstanding bonds, fully and unconditionally guaranteed by the United States, to the extent of $2,000,000,000. These bonds may be issued in amounts equal to the assets of the Corporation, including assets represented by bonds of the Federal land banks acquired by the Corporation in exchange for an equal face amount of its bonds.

The banks are also acting as agents of the Federal Farm Mortgage Corporation for the making of direct loans to farmers under the Emergency Farm Mortgage Act of 1933 (12 U. S. C. 1016, *et seq.*)

Of course, in the performance of its specific powers, a Federal land bank necessarily exercises many implied and incidental powers. For example, in connection with the real and personal property which it is authorized to acquire in the liquidation of defaulted loans, it must and does engage in the repair, renovation and operation of acquired real estate; and in the liquidation of personal property similarly acquired. However, it may and has happened that these incidental powers are exercised by the bank as trustee, in handling the proceeds of mortgages previously deposited with the Farm Loan Registrar, a public official, as collateral security for bonds. For the most part, the assets and moneys of a Federal land bank are earmarked. Only a small proportion of these assets and moneys are "free", that is, not impressed with an actual trust, or held for the performance of a particular public function.

Practically at all times a bank has fieldmen moving about in the various States of its district, making investigations and reports, collecting sums of money due from borrowers and others, and performing miscellaneous duties. Collections made by these fieldmen include installments of principal and interest on farm mortgage loans which are pledged as collateral security for bonds; and, as previously stated, the principal portion of such installments is impressed by law with a trust, and must be accounted for to the Farm Loan Registrar (12 U. S. C. § 897).

The bank is constantly engaged in making loans, and must send into the field the bonds or drafts which are used in the closing of such loans. Under the law, the bank may make these loans only for specific purposes, and each borrower must covenant in his mortgage to use the proceeds of his loan for such purposes. The loan funds are disbursed either through national farm loan associations (in the manner considered by this Court in *Federal Land Bank* v.

*Gaines*, 290 U. S. 326, or through a loan closing agent selected by the bank. If loan funds held for disbursement by the bank or the association were subject to attachment or garnishment, the purposes of the Farm Loan Act could be defeated in either of two ways:

1. Attachment of the loan proceeds while in the hands of the bank's agent, in a suit against the bank as principal creditor, would cause at least a temporary delay in the closing of the loan, and the element of time is frequently of the utmost importance—as in the case of a farmer who obtains a loan for the purpose of redeeming his property from foreclosure sale;

2. Garnishment of the loan proceeds, in the hands of the bank's closing agent, or of the local national farm loan association in a suit against the borrower's principal creditor, might deflect the loan proceeds from the purposes stipulated in the loan application and the bank's approval thereof, in direct violation of the provisions of the Federal Farm Loan Act, and such garnishment might even operate to apply these funds to a use for which they could not lawfully have been loaned in the first instance.

We do not cite these examples in support of a plea of practical necessity or convenience. On the contrary, we believe that these typical instances of practical routine are helpful in considering the legal question that is paramount in this case. They illustrate the purposes which Congress sought to accomplish in establishing the Federal land bank system, and the character of the agencies which it established as the means of effecting those purposes. When we examine these daily, routine transactions, we find that the Federal land bank is acting as an instrument of the Government and not a free agent, that its daily work is the execution of a series of public duties revolving about the acceptance and issuance and servicing of the mortgages

and bonds which are "instrumentalities of the Government of the United States", and which may be employed only for specific public ends.

The question of Federal agency was thoroughly briefed on behalf of a Federal land bank in connection with the case of *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180, where this Court held the Act to be constitutional. Throughout those briefs, the Federal land banks were referred to as "Federal instrumentalities", and at one point it was stated:

> "The Federal Land Banks, not only as they now exist as *mere incorporated bureaus of the Government*, directed in all their activities by Government officials, but also as they will exist after the Government stock has been retired and after the bonds held by the Treasury have been sold or paid, constitute facilities and instrumentalities for the use of money for a public purpose of great importance; and it was clearly within the authority of Congress, either to appropriate money or to issue Government bonds and apply the proceeds directly through the Treasury Department to the end in view, or to create these facilities and instrumentalities as appropriate means to the same end." (Italics added.)

When the decision was handed down the creation of the land banks as "Federal agencies" was referred to by Mr. Justice Day in the majority opinion of this Court (page 210) as follows:

> "But whether technically banks, or not, these organizations may serve the governmental purposes declared by Congress in their creation. Furthermore, these institutions are organized to serve as a market for United States bonds. Not less than 5% of the capital of the Federal Land Banks, for which stock is outstanding to Farm Loan Associations, is required to

be invested in United States bonds. Both kinds of banks are empowered to buy and sell United States bonds."

The character of the banks as Federal instrumentalities for a purpose relating to the general welfare was recognized by this Court in the case of the *Federal Land Bank of Columbia* v. *Gaines*, 290 U. S. 326, where it was stated:

> " • • • both the petitioner [Federal land bank] and the [national farm loan] association were, in a broad and general sense, public agencies or instrumentalities to carry out a policy of the Government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings."

In the case of *Krauthoff* v. *Kansas City Joint Stock Land Bank*, 23 F. (2d) 71, (certiorari denied) 280 U. S. 583, the Circuit Court of Appeals for the Eighth Circuit stated: "The [joint stock land] bank was a Federal agency".

Since the decision of the *Smith* case, the Federal land banks have passed through the stage of development which was anticipated in the opinion. The Government stock was retired, being replaced by capital furnished by associations of farmer-borrowers; the bonds found a public market, and Treasury purchases of those bonds were limited to amounts desired for the investment of public funds. This cycle was followed, as the court knows, by a period commencing in 1932 and extending through the present time, during which the Government has utilized the Federal land banks as fiscal agencies, to a greater extent than was ever before contemplated, for a public purpose of paramount importance—to arrest the further distintegration of the essential industry of agriculture. The measures recently taken by the Government, through the Federal land banks, show that Congress made use of the Government agencies already

available, for Governmental purposes. Such use of these facilities did not alter their inherent character, but merely enlarged the functions of the institutions for the purpose of meeting a national emergency.

We believe that this discussion of the functions performed by Federal land banks, under authority of the Acts of Congress, shows that within certain well defined limits they are actually carrying on the business of the Government. Whether the functions of these public corporations may be curtailed or enlarged in the future is immaterial. In the case of *Barnes* v. *District of Columbia*, 91 U. S. 540, 544, this Court said:

> "A municipal corporation, in the exercise of all of its duties, including those most strictly local or internal, is but a department of the State. The Legislature may give it all the powers such a being is capable of receiving, *making it a miniature State within its locality.* Again: it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality. We do not regard its acts as sometimes those of an agency of the State, and at others those of a municipality; but that, its character and nature remaining at all times the same, it is great or small according as the Legislature shall extend or contract the sphere of its action." (Italics added.) See also: 12 R. C. L. § 85; *Brooks Hdw. Co.* v. *Greer*, 111 Me. 78; 10 *Fletcher Cyc. Corp.* § 4776.

With respect to another class of public corporations, namely, national banks, which are privately owned, this Court held in the case of *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554, that it was beyond the power of a State to interfere with their functions by legislative or judicial

action, except "so far as the lawmaking power of the Government may permit". In this connection the court said:

> "The right of Congress to determine to what extent a state court shall be permitted to entertain actions against national banks and how far these institutions shall be subject to state control, is undeniable. National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character, and, within constitutional limits, are subject to the control of Congress and are not to be interfered with by state legislative or judicial action, except so far as the lawmaking power of the Government may permit."

In view of the rule laid down by this Court in the *Van Reed* case it is appropriate at this time to consider whether under the provisions of the Farm Loan Act Congress has given specific permission to creditors to attach or garnishee property or funds of a Federal land bank.

**2. The "sue and be sued" clause of the Federal Farm Loan Act does not constitute a waiver of immunity from attachment or garnishment.**

Section 4 of the Federal Farm Loan Act provides that a Federal land bank may "sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons". (12 USC § 676.) We respectfully submit that this stereotyped provision does not constitute a waiver of the inherent immunity of a Federal instrumentality from seizure of its property by summary process. An intention to waive a sovereign right of the Federal Government must be unmistakably shown in the terms of an Act of Congress. This rule was announced by Mr. Justice Strong speaking for this Court in the case of the *Dollar*

*Savings Bank* v. *United States*, 19 Wall. 227 (l. c. 239) as follows:

> "It is a familiar principle that the King is not bound by any act of Parliament unless he be named therein by special and particular words. *The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests.* He may even take the benefit of any particular act, though not named. The rule thus settled respecting the British Crown is equally applicable to this government, and it has been applied frequently in the different States, and practically in the Federal courts." (Italics added.)

Section 4 of the Act merely empowers the banks to sue and gave a reciprocal privilege to the public. This grant is made in general terms and must be construed in the light of all of the provisions of the Act. (*Brown* v. *Duchesne*, 19 How. 183.) It does not purport to prescribe the process by which the bank or its adversary may be hailed into court, or to define the privileges and immunities of either party. Mr. Justice Taney in delivering the opinion in the case of *Brown* v. *Duchesne, supra*, said:

> " • • • And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning.
>
> "Neither will the court, in expounding a statute, give to it a construction which would in any degree disarm the Government of a power which has been confided to it to be used for the general good—or which would

> enable individuals to embarrass it, in the discharge of the high duties it owes to the community—unless plain and express words indicated that such was the intention of the Legislature."

There are no "plain and express words" in the Farm Loan Act which permit creditors to attach the property of these sovereign instrumentalities. As this Court indicated in the case of the *District of Columbia* v. *Woodbury*, 136 U. S. 450, it did not regard the liability of a public corporation to be sued as synonymous with its liability to summary process of execution. Se also *Brooks Hdw. Co.*, 111 Me. 78.

The statutes providing for the government of the District of Columbia, passed by the Congress under its constitutional power to exercise exclusive legislative authority over the seat of the Federal Government, provided in part as follows:

> "The District of Columbia is that portion of the territory of the United States ceded • • • for the permanent seat of the Government of the United States • • • ." (R. S. D. C. § 1, June 11, 1878).
>
> "The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, *sue and be sued, plead and be impleaded* • • • ." (Italics added.) (R. S. D. C. § 2, June 11, 1878; 20 Stat. 102.)

Despite the privilege given the public to sue and implead the District Government, a review of a number of cases, which have been cited with approval by this Court, will show that it has been held that the District of Columbia is not subject to attachment and garnishment. This approval was indicated in *Chicago & N. W. Ry.* v. *Durham Co.*, 271 U. S. 251. In that case this Court was considering the

right of a creditor to garnishee a public carrier. In the course of his opinion Mr. Justice Brandeis said:

> "Thus, a garnishee may be under no liability, because the property could have been reached by direct levy. He may be under no liability because of the nature of the claim sought to be enforced, or because of the character of the plaintiff, of the principal defendant, of the garnishee,[6] or of the property sought to be reached."

Among the cases cited in support of this statement (Footnote No. 6) were the following:

> [6]*Buchanan* v. *Alexander*, 4 How. 20; *Fischer* v. *Daudistal*, 9 Fed. 145; *Pringle* v. *Guild*, 118 Fed. 655; *Moscow Hardware Co.* v. *Colson*, 158 Fed. 199; and *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351.

In the case of the *Columbia Brick Co.* v. *District of Columbia*, 1 App. D. C. 351, 356, the Court of Appeals of the District of Columbia held, on the authority of *Buchanan* v. *Alexander, supra*, that an equitable garnishment could not "bind the money" of the District of Columbia due a contractor.

> "This is an attempt by equitable garnishment to bind the money due the contractor Thomas, in the hands of the municipal corporation of this District. This, we think, cannot be done. If it could be done in this instance, it could be done in hundreds of other cases; and the consequences would be, that the municipal government would constantly be liable to the obstruction and embarrassment in the administration of municipal affairs, that such claims and resulting litigation would necessarily produce. In the absence of express legislation making the municipal corporation liable to such proceeding, both reason and public policy forbid it. [The court apparently did not believe that such 'express legislation' was contained in the authorization to 'sue and be sued' which, at the time of this decision, was contained in R. S. D. C. § 2]. * * *

"'A municipal corporation cannot be properly turned into an instrument or agency for the collection of private debts. It exists simply for the public welfare, and cannot be required to consume the time of its officers or the money in its treasury in defending suits, in order that one private individual may the better collect a demand due from another. A private corporation must assume the same duties and liabilities as private individuals, since it is created for private purposes. *But a municipal corporation is a part of the government. Its powers are held as a trust for the common good.* It should be permitted to act only with reference to that object, and should not be subjected to duties, liabilities or expenditures merely to promote private interests or private convenience.'" (Quoted by the court from *Merwin* v. *City of Chicago*, 45 Ill. 133.) (Italics added.)

A further statement of this rule, with citations to Federal and State cases, is found in *Moscow Hardware Company* v. *Colson*, 158 F. 199, 201, (also cited by this Court in *Chicago & N. W. Ry.* v. *Durham, supra*). In deciding that the University of Idaho, an instrumentality of the State, was immune from garnishment, the Circuit Court found no ruling by the Idaho courts, and therefore adopted the rule of the *Buchanan* case, stating (l. c. 201):

"It is undoubtedly true that every state has the right to subject all persons to garnishment process and to include in the term 'persons' public as well as private corporations; but, by reason of the injury which the courts have generally held would accrue to public interests by permitting the state and its agencies to be garnished, the intention of the Legislature to confer such right of garnishment upon a creditor will not be inferred from general language, *but the intention of the Legislature must clearly appear. This is a rule of statutory construction prevailing not only with regard to attachment statutes, but to all statutes which would operate to encroach upon what are commonly*

> *referred to as 'sovereign rights,'* or interfere with the orderly performance of public functions by those agencies established for the administration of government.

In *Savings Bank* v. *United States*, 19 Wall. 239, 22 L. Ed. 80, the court said: (See page 24 of this brief.)

The same rule was held to be applicable to a corporate agency of the United States, in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation* (App. D. C.) 53 F. (2d) 923. In that case a writ of attachment and garnishment was served upon the Fleet Corporation in aid of the execution of a judgment obtained against one of its employees. In holding this writ to be invalid, even though the Corporation could be sued like a private corporation, the court said:

> "All • • • terminals and real estate were the property of the United States and were operated by the Fleet Corporation as a public agency in the performance of certain administrative functions of the Government. The corporation is financed by the United States, the property operated by it belongs to the Government, and it functions as an instrumentality or department of the Government. Merchant Marine Act, 1920, c. 250, 41 Stat. 988; *Skinner & Eddy Corporation* v. *McCarl, Comptroller General*, 275 U. S. 1, 48 S. Ct. 12, 72 L. Ed. 131; *Emergency Fleet Corporation* v. *Western Union Tel. Co.*, 275 U. S. 415, 48 S. Ct. 198, 72 L. Ed. 345; *Fleet Corporation* v. *Harwood*, 281 U. S. 519, 50 S. Ct. 372, 74 L. Ed. 1011."

In *Pacific National Bank* v. *Mixter*, 124 U. S. 721, and *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554, this Court also passed upon cases which involved attempts to levy attachments upon property of national banks before final judgment. In each of these cases the Court based its decision upon the statutory prohibitions, holding that "The

remedy is taken away altogether and cannot be used under any circumstances."

The statutory prohibition referred to in these cases is found in Section 5242 of the Revised Statutes (12 U. S. C., § 91) and reads as follows:

> "No attachment, injunction or execution, shall be issued against such association, or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court."

Section 5157 of the same chapter of the Revised Statutes (12 U. S. C., § 37) as follows:

> "The provisions of this chapter, which are expressed without restrictive words, as applying to 'national banking associations' or 'associations', apply to all associations organized to carry on the business of banking under any Act of Congress."

In view of this last quoted provision, a United States District Court for the Fourth Judicial District of Minnesota, in an unreported opinion held that since the banks of the Farm Loan System were organized to carry on the business of banking (12 U. S. C., § 811) that joint stock land banks were exempt from attachment and garnishment before judgment. (*Farms Company* v. *Southern Minnesota Joint Stock Land Bank,* No. 274, 516). Even though this Court should feel, as we do, that this provision of the National Banking Act is not applicable to Federal Land Banks, these institutions would nevertheless be exempt from garnishment on account of the well-established rule for which we are contending, and which was also referred to in the *Farms Company* case, namely, "the defendant is a governmental instrumentality and by virtue thereof is entitled to immunity from such ancillary process as is instituted by plaintiff. • • • the court feels • • • that the law

is established that the defendant being a Federal agency cannot be hampered by garnishment proceedings such as instituted by the ancillary proceedings above, in the absence of *express consent by or on the part of Congress.*". (Italics added.) The privilege to sue and be sued is not "express consent."

The statutory prohibition relative to the attachment of property of national banks was further considered by this Court in the case of *Earle* v. *Pennsylvania* and *Earle* v. *Conway*, 178 U. S. 449, 456. In these cases the Court held that the prohibition against attachments before judgment does not extend to money or property which the bank holds for the account of another. In the first of these cases (l. c. 454) the court stated:

> "Whatever may be the scope of [R. S.] section 5242, an attachment sued out against the bank *as garnishee* is not an attachment against the bank or its property, nor a suit against it, within the meaning of that section. It is an attachment to reach the property or interests held by the bank for others."

However, in both of these cases this Court held that no execution could issue upon a judgment against a national bank in a garnishment suit, where the bank either before or after the commencement of the proceeding had been placed in the hands of a receiver by the Comptroller of the Currency. In the first of these cases (l. c. 454), the court stated:

> "We must not * * * be understood as holding that the distribution of the bank's assets in the hands of the receiver could have been in anywise directly controlled by the state court or seized under an attachment or execution in the hands of any state officer. On the contrary, the direction in the statute that the receiver pay over all moneys realized by him from the

assets of the bank to the Treasurer of the United States, subject to the order of the Comptroller, furnished a rule of conduct for him which neither an order of nor any proceedings in the state court could affect, modify or change. The scheme of the statute relating to suspended national banks is that from the time of a bank's suspension all its assets, of whatever kind, as they are at the time of suspension, pass in the first instance, to the receiver, the proceeds thereof to be distributed by the Comptroller among those whose claims are proved to his satisfaction or are adjudicated by some court of competent jurisdiction."

In the second *Earle* case the court stated (l. c. 457):

"* * * such an attachment cannot create any lien upon specific assets of the bank in the hands of the receiver, nor disturb his custody of those assets, *nor prevent him from paying to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys coming to his hands or realized by him as receiver from the sale of the property and assets of the bank.* After the service of the attachment upon the receiver it became his duty to report the facts to the Comptroller, and it then became the duty of the latter to hold any funds coming to his hands through the Treasurer of the United States as the proceeds of the sale of the bank's assets subject to any interest which the plaintiff may have legally acquired therein as against his debtor under the attachment issued * * * in his favor in the state court." (Italics added.)

In this connection it will be recalled that a large part of the funds and property coming into the hands of a Federal land bank must also be received and held in trust for a Federal officer—the Farm Loan Registrar. (12 U. S. C., § 897.)

In law and in fact, therefore, a Federal land bank is always in a situation which is closely parallel to that of

a national bank in receivership. Its assets, for the most part, must be handled in accordance with specific direction of the Act, its entire business must be conducted subject to the close scrutiny and regulation of the Farm Credit Administration, and its normal business routine is the performance of public functions, in the execution of governmental purposes. In other words, the scheme of the statute relating to Federal land banks requires that their assets be free from control by State courts, in order that the directions of that statute may constitute the paramount rule of conduct for the officers of the bank.

For these and other reasons previously set forth in this brief, the attachment and garnishment of the property and funds of a Federal land bank are totally different from the situation presented in the cases arising in connection with the operations of the United States Shipping Board Emergency Fleet Corporation.

This Court pointed out in *The Lake Monroe* case, 250 U. S. 254, that vessels operated by or through the Fleet Corporation were in certain circumstances subject to seizure, in accordance with maritime laws, because Congress had expressly provided in the Shipping Act of 1916 that "vessels purchased, chartered, or leased from the Shipping Board, while employed solely as merchant vessels, should be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States were interested therein as owner or otherwise." See also *Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202.

We respectfully submit, however, that the rule laid down in these cases supports the contentions made in this brief, namely, that a Federal instrumentality is not subject to garnishment and attachment since the Congress has not given creditors the specific right to do so.

**3. Federal Land Bank not a foreign corporation in any State of its district.**

We believe that it is unnecessary to burden the court with a long argument respecting the error which has been assigned to the ruling of the Supreme Court of Arkansas, with respect to its holding that a Federal land bank is a "foreign corporation" in a State where it is authorized to do business. We shall, therefore, point as briefly as possible to the principles upon which this petitioner relies.

The Federal Land Bank of St. Louis exists and operates by virtue of an Act of the Congress of the United States, and is authorized by its charter to do business in several States, including the State of Arkansas. It is a *national corporation*, with no State citizenship (*Bankers' Trust Co.* v. *Texas and Pac. Ry.*, 241 U. S. 295).

A national corporation is not "foreign" to any State where it is permitted by law to do business. The Federal Farm Loan Act, under which this bank was created, is a law of Arkansas. This Court has held, in the case of *Claflin* v. *Houseman*, 93 U. S. 130, 136, that:

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty."

Counsel has been unable to discover any case where this Court has passed upon the applicability, to a national corporation, of State laws relative to foreign corporations. However, under the previous decisions of this Court, with respect to State legislation, a Federal land bank may not be included within the statutory definition of a foreign corporation which was relied upon by the court below:

"A 'foreign corporation' is one created by the laws of some other State or country." (C. & M. Dig. 9743).

"The words 'other country' signify any part of the world out of this State." (C. & M. Dig. 9744).

In *First National Bank* v. *California*, 262 U. S. 366, this Court held that a section of the California Code which provided that money deposited with any bank, the account of which had been inactive for more than twenty years after the date of its deposit, should escheat to the State, did not apply to funds on deposit in national banks. Mr. Justice McReynolds, in delivering the opinion, said:

"These banks are instrumentalities of the Federal Government. Their contacts and dealings are subject to the operations of general and undiscriminating state laws which do not conflict with the letter of the general object and purposes of congressional legislation. But any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purpose of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290.

"The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. • • • Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.'" *Farmers' and Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 33, 34.

"Congressional legislation in respect of national banks 'has in view the erection of a system extending

throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States.' *Easton* v. *Iowa*, 188 U. S. 220, 229.

* * *

"This Court has often pointed out the necessity for protecting Federal agencies against interference by state legislation. The approved principle of *obsta principiis* should be adhered to. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank* v. *Dearing, supra; California* v. *Central Pacific R. R. Co.*, 127 U. S. 1; *Davis* v. *Elmira Savings Bank, supra; Easton* v. *Iowa, supra; Covington* v. *First National Bank*, 198 U. S. 100; *Farmers and Mechanics Savings Bank* v. *Minnesota*, 232 U. S. 516; *Choctaw, Oklahoma & Gulf R. R. Co.* v. *Harrison*, 235 U. S. 292; *Bank of California* v. *Richardson*, 248 U. S. 476."

Thus it appears that the laws of any State which tend to frustrate the purpose or impair the efficiency of an agency or instrumentality of the Federal Government is an interference with, and not binding upon, such instrumentality. Despite this principle, the Supreme Court of Arkansas said that "foreign corporations, in contemplation of law in this State, are defined" by sections 9743 and 9744 of its statutes. Because of this conclusion, another section of the same statutes was held to permit property of a Federal instrumentality to be seized by attachment, a burden which a State may not impose under the rules of this Court. By the same token, the "Arkansas Securities Act" * would also be applicable and would require the bank to obtain permission from State authorities before selling bonds in the

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* See pages 39 to 40 of the "Appendix."

Commonwealth. As this Court said in *Caledonian Coal Company* v. *Baker*, 196 U. S. 432, 446:

> "This state of the law may sometimes operate injuriously upon those who may wish to sue the railroad company in the territorial courts. But the situation cannot be changed by the courts. That can only be done by legislation."

However, other courts have held repeatedly that a corporation created by an Act of Congress with powers coextensive with the Union is not a foreign corporation within any State of the Union for the purpose of a State statute providing for constructive service upon foreign corporations. The case which has been most often cited is that of *Commonwealth* v. *Texas and Pac. Ry. Co.*, 98 Pa. St. 90. See also a more recent decision of the Supreme Court of North Carolina holding that the Federal Land Bank of Columbia was not a foreign corporation in that State. (*Leggett* v. *Federal Land Bank of Columbia*, 204 N. C. 151, 167 S. E. 557). In that case the court said:

> "The defendant in the instant case is a corporation created and organized under an act of the Congress of the United States, known as the Federal Farm Loan Act (see 12 U. S. C. A. § 641 *et seq.*). The validity of this act was upheld in *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577. The defendant was not only created and organized under and by virtue of said act of Congress; it derives its right to own property and to do business in this state solely from said act. It is not a foreign corporation having property or doing business in this state, under a license, express or implied, from North Carolina. 14 (*a*) C. J. 1214. For this reason the provisions of C. S. § 1137, are not applicable to the defendant. There was error in the order denying the motion of defendant that the action be dismissed."

See also *Steward* v. *Atlantic National Bank*, 27 F. (2d) 224, 228; *Matter of Cushing*, 40 Misc. 505, 82 N. Y. S. 795; *Eby* v. *Northern Pac. R. Co.*, 13 Phila. (Pa.) 161; *Texas, etc. R. Co.* v. *Weatherby*, 41 Tex. C. A. 409, 92 S. W. 58. 14 (a) C. J. 1214; 17 *Fletcher Cyc. Corp.* § 8291; Thompson on Corporations 3d Ed., Vol. 1, § 146.

Under the rule of these cases the Federal Land Bank of St. Louis is not a foreign corporation within the definition of the term as contained in the statutes of the State of Arkansas.

## VIII. Conclusion.

In the light of the foregoing, it is respectfully submitted that the decision of the court below is incorrect and should be reversed.

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## APPENDIX.

*Crawford and Moses' Digest,* (1921 *and* 1927) *Statutes of Arkansas:*

[Procedure in Attachments before Judgment.]

Section 1159. *Warning order.* Where it appears by the affidavit of the plaintiff, filed in the clerk's office at or after the commencement of the action (a), that he had made diligent inquiry, and that it is his information and belief that the defendant is:

First. A foreign corporation, having no agent in this State; or,

Second. A nonresident of this State; or,

Third. Has departed from this State with intent to delay or defraud his creditors; or,

Fourth. Has been absent from this State four months; or,

Fifth. Has left the country of his residence to avoid the service of a summons; or,

Sixth. Conceals himself so that a summons cannot be served upon him, or, where either of the last two mentioned facts is stated in the return, by the proper officer of a summons against the defendant, the clerk shall make and file with the papers in the case, an order warning such defendant to appear in the action within thirty days from the time of making the order (b). Act March 30, 1915, p. 1081.

Section 1160. *Publication.* The court may make the warning order upon the requisite facts being satisfactorily shown by affidavit or other proof. Warning orders shall be published weekly for at least four weeks. Civil Code, section 80, as amended March 27, 1871, p. 219.

["Foreign Corporation" Defined.]

Section 9743. *Foreign corporation.* A "foreign corporation" is one created by the laws of some other State or country.

Section 9744. *Other country.* The words "other country" signify any part of the world out of this State.

[Issuance of Securities, etc.]

Section 8418h. *Does not apply to what securities.* The provisions of this Act shall not apply to (a) securities of the United States, or any foreign government; or any State or Territory thereof, or of any county, city, township, district, or other public taxing subdivision of any State or Territory of the United States, or any foreign government; (b) unsecured commercial paper; (c) securities of public or quasi public corporations, the issue of which securities is regulated by the Arkansas Railroad Commission or by any public service commission or board of equal authority of any State or Territory of the United States or securities senior thereto; (d) securities of State or National Banks or Trust Companies; (e) securities of any domestic corporation organized without capital stock, and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes; (f) mortgages upon real or personal property situated in this State where the entire mortgage is sold and transferred with the bonds, note or notes secured by such mortgage; (g) increase of stock sold and issued to stockholders, also stock dividends; (h) securities which are listed in any standard manual of information when a copy of the same has been presented and approved by said Commission; provided, however, that said Commission shall have power to call for additional and further information than that contained in such manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities and also suspend either temporarily or permanently, the sale of any securities listed in such manuals after a hearing upon notice to the issuer of such securities if said Commission shall find in its opinion that the sale of such securities would work a fraud upon the purchaser thereof. Ib. sec. 5.

Section 8418r. *To comply with act before transacting business.* It shall be unlawful for any investment company

or dealer or representative thereof, either directly or indirectly, to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner in this State, any contracts, stocks, bonds, or other securities (except as expressly exempt herein) unless and until said Commission has approved thereof and issued its certificate in accordance with the provisions of this Act, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of the Act or the rules of the Commission. It shall be unlawful for any investment company, or dealer, or its or his agents to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus or other document in regard to its stocks, bonds or other securities in the State of Arkansas differing in any way from the copy filed with the said Commission as provided by this Act. It shall be unlawful for any newspaper published in the State of Arkansas to advertise the sale of any stocks, bonds or other securities which have not been approved by said Commission or which are not exempt under the provisions of this Act. Ib. sec. 15.